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10/576,517	05/07/2007	Domokos Boda	9007-1020	3719
466	7590	11/23/2009	EXAMINER	
YOUNG & THOMPSON			TOTH, KAREN E	
209 Madison Street				
Suite 500			ART UNIT	
Alexandria, VA 22314			PAPER NUMBER	
			3735	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/576,517	<b>Applicant(s)</b> BODA, DOMOKOS	
	<b>Examiner</b> KAREN E. TOTH	<b>Art Unit</b> 3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11, 14, 15, 17, 19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11, 14, 15, 17, 19, 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Response to Arguments***

2. Applicant's arguments filed 15 July 2009 have been fully considered but they are not persuasive.

Applicant has argued that a particular phrase added to the limitations describing the invention's second tube better defines it over Salzman (US 5423320). The Examiner disagrees, because the amendment is merely a repetition of the phrase preceding it, and this particular amendment does not add any further limitations to the invention.

Applicant has also argued that one of ordinary skill in the art would not find it obvious to form a device configured to be inserted in a patient's esophagus to have the particular diameters and wall thicknesses set forth in Applicant's claims. This is not found persuasive. Mere allegations in a response are not sufficient to overcome a rejection. Salzman discloses all the features claimed except for describing the particular dimensions of diameter and wall thickness, and is a gas-permeable tonometric device configured to be inserted into a patient's esophagus, just as Applicant's invention is. Applicant has not provided any evidence of the particular dimensions as providing a particular advantage, serving a particular purpose, or solving a stated problem.

Applicant further argues that Salzman does not have the first and second tube connected to different tubes, but does not provide any support for this argument. The

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Examiner does not find such an unsupported argument persuasive, particularly since Salzman does have additional tubes connected to the first and second tubes.

Applicant also argues that Salzman is "more complicated" because it has a plurality of membranes. This argument is not persuasive, since Applicant's invention is defined by "comprising", a non-limiting term, and Salzman discloses all the features of the invention.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., stabilization of the sensor(s) in the measuring medium) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### ***Claim Objections***

3. Claim 11 is objected to because of the following informalities:

Line 6 reads "a section (24) into the body". This description of the "section" does not make sense. For the purposes of examination, the claim will be treated as though the amendment removing the operative phrase "to be introduced" has not been removed.

Lines 15-16 contain a phrase that is an exact duplicate of the phrase preceding it in lines 13-15. For the purposes of examination, the claim will be treated as though this new amendment is not present.

Appropriate correction is required.

4. Claim 15 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The dimensions for the first and second tubes presented in claim 15 are broader ranges than those defined in claim 11, its parent.

***Claim Rejections - 35 USC § 103***

5. Claims 11, 14, 15, 17, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salzman (US Patent 5423320) in view of Fiddian-Greene (US Patent 6238339).

Regarding claims 11 and 19, Salzman discloses a tonometric device comprising a distal end configured to be inserted in a patient's gastrointestinal tract (element 14) with a section that is introduced into the body (element 14a), where the introduced section comprises a first tube (element 54) that is connected to an additional tube (the portion of 54 remaining outside the body) and parallel to a second tube (element 56) that is also connected to an additional tube (the portion of 56 remaining outside the body), where the distal end of the first and second tubes are in communication (figure 6), where the tubes are made of gas permeable material (column 5, lines 6-8 and 16-23). Salzman does not disclose the particular gas permeable material, means on the

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external portion of the device for fixing it in position, or the specific diameters and wall thicknesses of the first and second tubes. Fiddian-Greene teaches a tonometric device comprising a sensing section covered with a gas-permeable silicone rubber membrane (column 8, lines 50-51), where the device's position may be fixed using an external component of the device (element 24), in order to effectively control sampling. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the device of Salzman with a silicone rubber tube membrane and means for fixing the device's position, as taught by Fiddian-Greene, in order to effectively control sampling. Though Salzman does not expressly disclose the specific diameter and wall thicknesses of the tubes, at the time the invention was made it would have been an obvious matter of design choice for one of ordinary skill in the art to choose a particular wall thickness and diameter, because the Applicant has not disclose that the particular diameters and thicknesses provide a particular advantage, are for a particular purpose, or solve a stated problem. Moreover, it appears that a particular combination of wall thickness and diameter chosen by one of ordinary skill in the art and Applicant's wall thickness and diameter would perform equally well to monitor a patient.

Regarding claim 14, Salzman in view of Fiddian-Green discloses all the elements of the claimed invention, as described above, except for connecting the tubes to a syringe. Fiddian-Greene further teaches tubes that are configured to connect to a syringe (column 24, lines 60-64), in order to manually control pressure. It would have been obvious to one of ordinary skill in the art at the time the invention was made to

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have made the system of Salzman in view of Fiddian-Green with the tubes configured to connect to a syringe, as taught by Fiddian-Greene, in order to manually control pressure.

Regarding claim 15, though Salzman does not expressly disclose the specific diameter and wall thicknesses of the tubes, at the time the invention was made it would have been an obvious matter of design choice for one of ordinary skill in the art to choose a particular wall thickness and diameter, because the Applicant has not disclose that the particular diameters and thicknesses provide a particular advantage, are for a particular purpose, or solve a stated problem. Moreover, it appears that a particular combination of wall thickness and diameter chosen by one of ordinary skill in the art and Applicant's wall thickness and diameter would perform equally well to monitor a patient.

Regarding claim 17, Salzman's second tube is within the wall surrounding the first tube (figure 6), since the entire shaded structure surrounding the first tube may be considered its wall, thereby making the second tube formed in that wall.

Regarding claim 20, Fiddian-Greene further teaches the gas-permeable material being configured to be permeable for carbon dioxide (column 8, lines 59-67), in order to allow monitoring of a patient's pH. It would have been obvious to one of ordinary skill in the art at the time the invention was made to d have made the device of Salzman in view of Fiddian-Green and Singh permeable for carbon dioxide, as taught by Fiddian-Greene, in order to allow monitoring of a patient's pH.

### ***Conclusion***

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6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAREN E. TOTH whose telephone number is (571)272-6824. The examiner can normally be reached on Mon thru Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Patricia C. Mallari/  
Primary Examiner, Art Unit 3735

/K. E. T./  
Examiner, Art Unit 3735